



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB902]

Atlantic Highly Migratory Species; Initiation of 5-Year Essential Fish Habitat

Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of initiation of 5-year essential fish habitat (EFH) review; request for information.

SUMMARY: NMFS announces the initiation of a 5-year review of EFH for Atlantic highly migratory species (HMS) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Consistent with the regulatory provision stating that NMFS should periodically review and revise or amend the EFH provisions as warranted based on available information, the purpose of the 5-year review is to evaluate the EFH provisions of the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and determine whether updates to Atlantic HMS EFH are warranted. The review will be based on the best information or data available regarding Atlantic HMS and their habitats. NMFS requests public submissions of information that was not previously included in recent updates to Atlantic HMS EFH or has become available since publication of Final Amendment 10 to the 2006 Consolidated Atlantic HMS FMP (Amendment 10), which reviewed and updated HMS EFH in 2017.

DATES: To allow adequate time to conduct this review, NMFS must receive your information no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Electronic copies of information related to the Atlantic HMS EFH 5-Year Review may be obtained on the HMS Management Division website at:
<https://www.fisheries.noaa.gov/action/essential-fish-habitat-5-year-review>.

You may submit information on this document, identified by NOAA-NMFS-2022-0036, via the Federal e-Rulemaking Portal. Go to *www.regulations.gov*, enter “NOAA-NMFS-2022-0036” into the search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

You may also submit information via email, with the subject “Atlantic HMS EFH 5-Year Review” to *NMFS.SF.HMSEFH@noaa.gov*.

Instructions: Comments and information sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments and information received are a part of the public record and may be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments and information (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney

(*jennifer.cudney@noaa.gov*) or Peter Cooper (*peter.cooper@noaa.gov*) by email, or by phone at (301) 427-8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS FMP and its amendments are implemented by regulations at 50 CFR part 635.

Section 303(a)(7) of the Magnuson-Stevens Act requires that FMPs describe and identify EFH based on the guidelines established by the Secretary under section 305(b)(1)(A) of the Magnuson-Stevens Act, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. NMFS published guidelines to implement the Magnuson-Stevens Act's EFH provisions in regulations at 50 CFR part 600, Subpart J - Essential Fish Habitat and Subpart K - EFH Coordination, Consultations, and Recommendations. EFH is defined in section 3(10) of the Magnuson-Stevens Act as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The FMP regulations (50 CFR 600.815) addressing EFH state that fishery management councils and NMFS should periodically review and revise or amend the EFH provisions as warranted based on available information (§ 600.815(a)(10)).

In 2009, NMFS completed a 5-year review of EFH for Atlantic HMS in Final Amendment 1 to the 2006 Consolidated Atlantic HMS FMP (Amendment 1) (74 FR 28018, June 12, 2009). As a result of the 5-year review, in Amendment 1, NMFS updated and revised existing identifications and descriptions of EFH for Atlantic HMS, designated a Habitat Area of Particular Concern (HAPC) for bluefin tuna in the Gulf of Mexico, and updated the analysis of fishing and non-fishing impacts to EFH. In 2010, NMFS published a Final Environmental Impact Statement for Amendment 3 to the 2006 Consolidated Atlantic HMS FMP that designated EFH for smoothhound sharks using the same methodology in Final Amendment 1. In 2010, NMFS also published an interpretive rule and final action (75 FR 57698, September 22, 2010) that added roundscale spearfish to the definition of terms in the Atlantic HMS regulations to accurately reflect the latest species determinations and taxonomic classification nomenclature, and defined EFH for roundscale spearfish. On July 1, 2015, NMFS published a Notice of Availability regarding the completion of another 5-year review of EFH for Atlantic HMS and a Notice

of Intent to initiate an amendment to revise Atlantic HMS EFH descriptions and designations (80 FR 37598). In Final Amendment 10 (82 FR 42329, September 7, 2017), NMFS updated and revised existing identifications and descriptions of EFH for Atlantic HMS; modified existing HAPCs for bluefin tuna and sandbar shark; created new HAPCs for lemon shark and sand tiger shark; and updated the analysis of fishing and non-fishing impacts to EFH.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best data available regarding Atlantic HMS and their habitats and that the best scientific information available is used in the description and identification of EFH consistent with National Standard 2 of the Magnuson-Stevens Act, NMFS is soliciting information from the public, government agencies, tribes, the scientific community, industry, environmental entities, and any other parties, concerning EFH of Atlantic HMS. Categories of requested information are based on the 10 EFH components identified in FMP regulations. These include: (1) Description and identification of EFH; (2) Fishing activities that may adversely affect EFH; (3) Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH; (4) Non-fishing related activities that may adversely affect EFH; (5) Cumulative impacts analysis; (6) Conservation and enhancement; (7) Prey species; (8) Identification of HAPCs; (9) Research and information needs; and (10) Review and revision of EFH components of FMPs (§ 600.815(a)(1)-(10)). Any new information will be considered during the 5-year review and in any related follow-up actions (if warranted) and may also be used in evaluating ongoing research and management of Atlantic HMS.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2022.

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National Marine Fisheries Service.

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